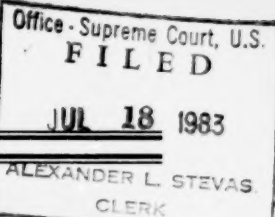


83-102  
No.



IN THE  
**Supreme Court Of The United States**  
OCTOBER TERM, 1982

GRENADA BANK, A MISSISSIPPI CORPORATION,  
D/B/A "COAHOMA BANK",

*Petitioner,*

vs.

ROBERT WILLEY, SR., LINDA B. WILLEY,  
JOHN F. WATSON, JOHN T. JAMES, JR.,  
MARKO PLANNING COMPANY, INCORPORATED,  
A Tennessee Corporation, and SOUTHERN  
CONSULTING CORPORATION, A Tennessee  
Corporation,

*Respondents,*

vs.

HUNTINGDON ASSOCIATES, LTD., CLARENCE  
C. DAY, and LAWSON F. APPERSON,

*Intervenors/Respondents.*

**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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## **QUESTIONS PRESENTED**

- I. WHETHER AN ATTEMPTED CONVEYANCE OF LIMITED PARTNERSHIP INTEREST, INCORPORATED INTO AN UNRECORDED REVISED AGREEMENT OF LIMITED PARTNERSHIP, IS EFFECTIVE AS TO THIRD PERSONS, ESPECIALLY AGAINST JUDGMENT CREDITORS ATTEMPTING TO REACH SUCH INTERESTS AS THEY APPEAR OF RECORD OR AGAINST LENDERS TAKING SUCH INTERESTS AS COLLATERAL, AS THEY APPEAR OF RECORD.
- II. WHETHER THE UNIFORM LIMITED PARTNERSHIP ACT PROVIDES A STATUTORY METHOD, AS DISTINGUISHED FROM A CONVEYANCE OF INTEREST OF INCREASING OR DECREASING A LIMITED PARTNER'S INTEREST WITHOUT DISCLOSURE TO THE PUBLIC BY RECORDATION, THAT IS EFFECTIVE AGAINST THIRD PARTIES.
- III. WHETHER RULE 69(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE CONTROLS ENFORCEMENT OF FEDERAL JUDGMENTS AGAINST LIMITED PARTNERSHIP INTERESTS OR IF CONFLICTING STATE LAW CONTROLS.

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## REASONS FOR GRANTING THE WRIT:

- I. The construction of the Uniform Limited Partnership Act by the Court of Appeals, if allowed to stand, will result in a widespread exposure of the public in general and of investors and creditors in particular to harmful and unfair transactions in limited partnership interests. .... 8
- II. The United States District Court for the Western District of Tennessee ruled that a writ of execution was proper process in Federal Court in Tennessee for executing on a limited partnership interest, pursuant to Federal Rules of Civil Procedure, Rule 69(a).

The United States Court of Appeals for the Sixth Circuit failed to consider this issue and reversed the District Court on other grounds.

In a related case, upon identical facts, and with similar state laws, the United States Court of Appeals for the Fifth Circuit held that a writ of execution was not proper process in Missis-

issippi against a limited partnership interest, as such issue was controlled by state law, not by Federal Rule 69(a).

This Conflict of opinion directly raises a substantial and important federal issue regarding interpretation of Federal Rule 69(a), which affects enforcement of federal judgments nation-wide. .... 13

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IN THE  
**Supreme Court Of The United States**  
OCTOBER TERM, 1982

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GRENADA BANK, A MISSISSIPPI CORPORATION,  
D/B/A "COAHOMA BANK",

*Petitioner,*

vs.

ROBERT WILLEY, SR., LINDA B. WILLEY,  
JOHN F. WATSON, JOHN T. JAMES, JR.,  
MARKO PLANNING COMPANY, INCORPORATED,  
A Tennessee Corporation, and SOUTHERN  
CONSULTING CORPORATION, A Tennessee  
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*Respondents,*

vs.

HUNTINGDON ASSOCIATES, LTD., CLARENCE  
C. DAY, and LAWSON F. APPERSON,

*Intervenors/Respondents.*

---

**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

---

**ORDERS BELOW AND JURISDICTION**

Petitioner Grenada Bank seeks review of the Order of the United States Court of Appeals for the Sixth Circuit filed on April 18, 1983, which reversed a judgment of the United States District Court for the Western District of Tennessee, and remanded for entry of an appropriate order.

This opinion has not been officially reported; it may be found in the Appendix to this petition.

In a companion case, the United States Court of Appeals for the Fifth Circuit affirmed a judgment from the United States District Court for the Northern District of Mississippi. This opinion has not been officially reported; it may be found in the Appendix to this petition. Petitioner filed a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit before this Court on April 21, 1983. It was denied on June 13, 1983. This order has not been officially reported; it may be found in the Appendix to this petition.

Petitioner filed a Motion to Defer Consideration of the Petition to the United States Court of Appeals for the Fifth Circuit on June 13, 1983; a copy of this Motion may be found in the Appendix to this petition. This Motion was denied by order of the Court filed June 13, 1983; it may be found in the Appendix to this petition.

The Order of the United States District Court for the Western District of Tennessee, filed on November 20, 1981, has not been officially reported; it may be found in the Appendix to this petition.

This court has jurisdiction to review the decisions below, pursuant to 28 U.S.C. §1254(1).

**STATUTES AND RULES INVOLVED**

- (1) **UNIFORM LIMITED PARTNERSHIP ACT**, as enacted by the State of Tennessee, Tenn. Code Ann. §61-2-101 et seq:

Full text of the Tennessee Uniform Limited Partnership Act is set forth in the Appendix to this petition.

- (2) **UNIFORM LIMITED PARTNERSHIP ACT**, as enacted by the State of Mississippi, Miss. Code Ann. §79-13-1 (1972) et seq:

Full text of the Mississippi Uniform Limited Partnership Act is set forth in the Appendix to this petition.

- (3) **FED. R. CIV. P. 69(a)**, reads in part as follows:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought. . . .

## STATEMENT OF THE CASE

This Petition arises out of post-judgment efforts of the original Plaintiff, Grenada Bank, to satisfy a federal court judgment against one of the defendants, Robert Willey, Sr., through execution and judicial sale of Willey's 41% interest in a Tennessee limited partnership.

On September 25, 1980, Grenada Bank obtained a judgment in the United States District Court for the Northern District of Mississippi against Robert Willey, Sr., and other promoters. On June 17, 1981, Grenada Bank obtained a second judgment against Willey and other promoters in the United States District Court for the Northern District of Mississippi.

In September, 1980, Willey owned a 38% limited partnership interest and a 2% general partnership interest in Huntingdon Associates, Ltd., a Tennessee limited partnership, duly recorded under the laws of that state, which was formed for the purpose of developing HUD/FHA-assisted apartment projects.

In June, 1981, an Amended and Restated Partnership Agreement for Huntingdon Associates, Ltd. was executed but not recorded. Intervenorrs were to be admitted as partners and were required to infuse One Million Dollars of new capital into the limited partnership in exchange for an aggregate 99.7% partnership interest. This addition of funds and investors was intended to reduce Willey's share of ownership from a 41% partnership interest (38% limited and 2% general) to a .1% limited partnership interest. A second agreement was concurrently entered into between Intervenorrs and Willey, entitled "Subscription Agreement". This Subscription Agreement contained terms and

conditions for the purchase of interests in said partnership, reflected in the Amended and Restated Partnership Agreement. The Subscription Agreement provided that the Amended and Restated Agreement was to be submitted promptly to HUD/FHA for approval of Intervenor as partners, and that immediately upon such approval, the Amended Partnership Agreement was to be properly recorded. It further provided that failure to obtain HUD/FHA approval within sixty days after the date of execution of the agreements would result in immediate return of all consideration paid by Intervenor, and the agreements (the Amended and Restated Partnership Agreement and the Subscription Agreement) were to terminate, be void and of no effect.

In July, 1981, Grenada Bank registered its judgment against Willey in Tennessee and recorded it in the appropriate county offices. At the same time, writ of execution was issued by the District Court in Tennessee and recorded in the appropriate county offices. The writ was served on Willey in August.

Not until September did Intervenor record the Amended and Restated Agreement in the appropriate county offices.

Thereafter, Grenada Bank filed a Motion for Order Directing Judicial Sale of Willey's interest in the limited partnership.

At trial, Intervenor contended that they acquired, prior to issuance and service of writ of execution, by virtue of the revised agreement executed in June, a 99.7% interest in Huntingdon as of June, which precluded a sale of 41% of the limited partnership interest to satisfy the

judgment against Willey. Grenada Bank argued that the June transaction was void because (1) governmental approval for the new partnership was not obtained within sixty days as required by the Subscription Agreement and (2) that as to third parties, the Amended and Restated Partnership Agreement was of no effect because of failure to record pursuant to the Uniform Limited Partnership Act.

The District Court construed the sixty day approval clause of the Subscription Agreement as merely a termination provision which Intervenor and Willey impliedly waived, and not as a condition subsequent to an executory contract. The District Court further concluded that failure to record did not bear upon the validity of the transfer of limited partnership interest, but merely precluded a partner undisclosed by public records to claim the status and protection of a limited partner. The District Court, however, ruled that Grenada Bank had used appropriate proceeds for executing on a limited partnership interest.<sup>1</sup>

Grenada Bank appealed the District Court's decision to the United States Court of Appeals for the Sixth Circuit, to determine what rights to participate in profits or (tax) losses of a limited partner may validly be assigned or transferred by such partner, and what consequences result from the failure to record such transfers or assignments. The Bank further raised the issue of whether the sixty day approval clause was a termination provision or a condition subsequent.

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<sup>1</sup> \*In a companion case, in which Grenada Bank sought to execute upon Willey's limited partnership interests in the State of Mississippi, the United States Court of Appeals for the Fifth Circuit held that a writ of execution was not appropriate process for executing on such interests, relying on state (Mississippi) law rather than on the Federal Rules of Civil Procedure.



On April 18, 1983, the United States Court of Appeals for the Sixth Circuit reversed the judgment of the District Court and remanded with instructions to enter an appropriate order. The Court of Appeals ruled that there was no transfer, sale or assignment of Willey's 41% interest in the original Huntingdon partnership to the Intervenors. Rather, there was a "reduction" in Willey's interest in the partnership from 41% to .1%. The Court of Appeals also held that failure to record the Amended and Restated Partnership Agreement was not ineffective as to third parties, but merely precludes the partners from claiming the status of *limited* partners when dealing with third parties who were without notice of the limited liability due to a failure to record. The Court of Appeals then ruled that Grenada Bank may levy against Willey's .1% interest as a general partner in order to satisfy its judgment, reversing the District Court and remanding for entry of an appropriate order.

This Petition seeks a writ of review of the order from the United States Court of Appeals for the Sixth Circuit.

## REASONS FOR GRANTING THE WRIT

- I. THE CONSTRUCTION OF THE UNIFORM LIMITED PARTNERSHIP ACT BY THE COURT OF APPEALS, IF ALLOWED TO STAND, WILL RESULT IN A WIDESPREAD EXPOSURE OF THE PUBLIC IN GENERAL AND OF INVESTORS AND CREDITORS IN PARTICULAR TO HARMFUL AND UNFAIR TRANSACTIONS IN LIMITED PARTNERSHIP INTERESTS.

### A. The Decision Below an Error of Law

The decision below held that Willey's interest in the limited partnership was reduced from 41% to .1% as a result of the Subscription Agreement and the Amended and Restated Partnership Agreement. The court reached this conclusion despite the failure to record the amended certificate (as required by Statute) and despite the failure to obtain HUD/FHA approval, (as required by the Subscription Agreement.)

The court held that failure to record a certificate of limited partnership does not void the creation of the limited partnership but precludes the *partners* from claiming the status of *limited* partners. As authority for this proposition, the court cited *Peerless Mills v. American Tel. & Tel. Co.*, 527 F.2d 445, 449, n. 1 (2d Cir. 1975).

Petitioner contends that reliance on this case is an error of law. *Peerless* is not on point, in that it concerns liability between partners and not to third parties. The United States Court of Appeals for the Second Circuit in *Peerless* stated, "Whatever effect the conceded failure . . . to comply with these filing provisions may have with respect to . . . third parties is not before us." Interestingly in Footnote 1

of *Peerless*, relied on by the Sixth Circuit below, reference is given to the *Hoeffer* case holding that the "purpose of recording certificates of limited partnership is to acquaint third persons dealing with a partnership with its status." *Hoeffer v. Hall*, 75 N.M. 751, 411 P.2d 230, 233 (1965). Such purpose is apparently not recognized by the ruling of the Sixth Circuit in the instant case. Clearly *Peerless* is not good authority for the proposition that failure to record a certificate of limited partnership merely results in the partnership being that of a general partnership, even as to third parties. The *Peerless* court carefully limited itself to liabilities between partners.

The decision below apparently misperceives the issue of recordation. Cases construing the Uniform Limited Partnership Act which have held that failure to record does not void the creation of the partnership, but precludes the partners from claiming the status of limited partners, have in each instance been dealing with claims between the partners themselves. Between such persons, a general partnership by estoppel has been recognized as a general principle of law. 58 Am. Jur. 2d *Partnership*, §§67 et seq (1964). The Uniform Partnership Act has a comparable provision, providing as follows:

- (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consent-

ed to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making a representation or consenting to its being made. Unif. Partnership Act §16.

As of August, 1979, the Uniform Partnership Act containing said provision had been enacted by all states except Georgia, Louisiana, and the jurisdiction of Puerto Rico. Careful reading of the provision cited above, and of the *Peerless* case, makes clear that persons engaged in such associations are estopped from denying the existence of a general partnership.

This, however, is not the issue in the case at hand. Here the circumstances are quite different: there is a pre-existing limited partnership agreement, duly recorded, there is a third party relying on said recorded certificate of limited partnership; the partners to said limited partnership, together with new investors with access to information from the partners, have attempted to form a new partnership; the new partnership is intended to change the proportionate ownership of the old partnership; and the change is not made of public record. Grenada Bank contends that as to itself (a third party without notice of the included change of the old partnership) the new and restated partnership is of no effect until recorded in public records as required by statute. The decision below is thus in error. It fails to recognize the involvement of a third party. It ignores the existence of the duly recorded limited partnership, on which third parties must be able to rely until such time as the change is reflected by public records.

## B. Effect of Decision Below

### 1. Nature of Limited Partnerships in General

Limited partnerships are not merely a more complex form of partnership. They are instead unique investment vehicles utilized by sophisticated investors including significant amounts of money. These limited partnerships have given rise to rapid and healthy capital formation in this country, contributing to continued growth in the national economy. To the individual investor, limited partnerships offer one of the most preferred tax-shelters, after the Tax Reform Act of 1976. See T. Lynn, H. Goldberg & D. Abrams, *Real Estate Limited Partnerships* (1977).

They are regulated by state law; all states except Louisiana and the jurisdiction of Puerto Rico have enacted the Uniform Limited Partnership Act. Most jurisdictions have specifically authorized recourse to judicial opinions from other jurisdictions utilizing the Act, and such opinions are generally considered persuasive. See, e.g., Tenn. Code Ann. §61-2-127(b).

The Uniform Limited Partnership Act, enacted by Tennessee and codified at Tenn. Code Ann. §61-2-101 et seq.,<sup>1</sup> requires recordation of a certificate in order for the limited partnership to be formed. Tenn. Code Ann. §61-2-102. Likewise, the Act requires amendment of the certificate when there is a change in the amount or character of the

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<sup>1</sup>Full text of the Tennessee Uniform Limited Partnership Act is provided in the Appendix to this Petition; the Act does not expressly provide for a "reduction" of interest but instead mandates an amendment of the certificate upon a change in the "amount or character" of the contribution of a limited partner. The State of Mississippi has enacted the Uniform Limited Partnership Act; full text of the Mississippi Act is also provided in the Appendix to this Petition. Its provisions are substantially identical to those of Tennessee, as described above.

contribution of the limited partner. Tenn. Code Ann. §61-2-124. The certificate must accurately represent the limited partnership agreement. Tenn. Code Ann. §61-2-124. If the certificate contains a false statement, the person suffering loss by reliance on the statement may hold liable any party to the certificate who knew the statement to be false. Tenn. Code Ann. §61-2-106. A certificate is not amended until there is filed *for record* in the appropriate county office an amended certificate meeting the requirements of the original certificate. Tenn. Code Ann. §61-2-125(e).

Thus a central provision of this statutory plan is the recordation requirement. Recordation, however, is necessary not between the parties, but in order to give notice to third parties (the public) of the nature of the association. *Brown v. Panish*, 99 Cal. App. 3d 429, 160 Cal. R. 282 (1979); *Hoeffer v. Hall*, 75 N.M. 751, 411 P.2d 230 (1965).

The result of the decision below is to effectively destroy this statutory plan by rendering meaningless the recordation requirement.

## 2. Limited Partnership Law Should Be Compared to Securities Law.

Prior to 1933, investors and the American public generally had little or no effective protection from harmful and unfair trading practices in securities. To provide such protection, the Securities and Exchange Acts of 1933 and 1934 were enacted. 15 U.S.C. §77a et seq; 15 U.S.C. §78a et seq.

This federal statutory scheme recognizes the need to prevent those persons dealing in securities, who are experienced and knowledgeable in issuance of securities,

from imposing upon the public by reason of their background and knowledge. *Texas Continental Life Ins. Co. v. Bankers Bond Co.*, 187 F. Supp. 14 (D.C. Ky. 1960), *rev'd on other grounds*, 307 F.2d 242 (6th Cir.). In order to achieve these purposes, a full disclosure principle was established. See, e.g., 15 U.S.C. §78j (b); 15 U.S.C. §78l; 15 U.S.C. §78n; 15 U.S.C. §78v and many others.

Without a full disclosure policy, *as a matter of public record*, the federal securities laws would be meaningless. The corollary is true for limited partnership law.

Limited partnerships are likewise investment vehicles substantially affecting the national economy. The decision below will establish precedent allowing limited partnerships to become a haven for unscrupulous persons who prefer not to disclose their associations, practices or whereabouts in order to prey upon innocent investors and creditors. Thus, the scheme set up by the Uniform Limited Partnership Act, which intended a strict requirement of recordation, will utterly fail as a result of the decision below, leaving a substantial part of the national economy and the investing public without protection.

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II. THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE RULED THAT A WRIT OF EXECUTION WAS PROPER PROCESS IN FEDERAL COURT IN TENNESSEE FOR EXECUTING ON A LIMITED PARTNERSHIP INTEREST, PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 69(a).

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FAILED TO CONSIDER THIS

ISSUE AND REVERSED THE DISTRICT COURT ON OTHER GROUNDS.

IN A RELATED CASE, UPON IDENTICAL FACTS AND WITH SIMILAR STATE LAWS, THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HELD THAT A WRIT OF EXECUTION WAS NOT PROPER PROCESS IN MISSISSIPPI AGAINST A LIMITED PARTNERSHIP INTEREST, AS SUCH ISSUE WAS CONTROLLED BY STATE LAW, NOT BY FEDERAL RULE 69(a).

THIS CONFLICT OF OPINION DIRECTLY RAISES A SUBSTANTIAL AND IMPORTANT FEDERAL ISSUE REGARDING INTERPRETATIONS OF FEDERAL RULE 69(a), WHICH AFFECTS ENFORCEMENT OF FEDERAL JUDGMENTS NATION-WIDE.

Rule 69, Federal Rules of Civil Procedure, mandates that the proper process to enforce a judgment in federal court for the payment of money is a writ of execution. The rule provides federal courts with the power to direct otherwise, but a party should not do so without such court direction. Petitioner contends that the purpose of the language of Rule 69 is to continue the modernization of civil procedure in federal courts, just as the rules do not provide for extraordinary writs still allowed by state law. The second sentence of Rule 69(a) merely provides that the *procedure* which is proper for use in such executions is controlled by the practice and procedure of the state in which the district court is held. This sentence should not be construed to diminish the express language of the rule directing that proper process "shall" be a writ of execution. The words "writ of execution" are an explicit reference to a specific writ, not to the general process of execution. The



United States District Court for the Western District of Tennessee agreed with Petitioner's analysis, and held that the writ used by Petitioner was appropriate process for executing on Willey's limited partnership interest. This issue was not raised on appeal, and thus the United States Court of Appeals for the Sixth Circuit did not consider this issue, reversing on other grounds.

The United States Court of Appeals for the Fifth Circuit, however, agreed with the District Court for the Northern District of Mississippi that a writ of execution *was not proper process against a limited partnership interest*, in the State of Mississippi. The Fifth Circuit held that the second sentence of Rule 69(a) was controlling, and thus Mississippi law determined the appropriate writ.

This issue involves a substantial and important issue of federal procedure. The Court should grant a writ of certiorari to consider the proper construction of Rule 69(a). It is of paramount importance that successful parties to actions in federal court be able to employ with confidence and certainty the Federal Rules of Civil Procedure appropriate for enforcement of federal judgments.

The conflict of opinion between the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Tennessee needs resolution which is possible only through a decision of this Court.

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**CONCLUSION**

For the reasons stated, the questions presented merit review by this Court by grant of a writ or by summary disposition.

Respectfully submitted,

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# **APPENDIX**

A-1

No. 81-5913

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

GRENADA BANK, d/b/a  
COAHOMA BANK ..... *Plaintiff-Appellant*

v.

ROBERT WILLEY, SR., et al ..... *Defendants*  
HUNTINGDON ASSOCIATES, LTD.,  
CLARENCE C. DAY and LAWSON  
F. APPERSON ..... *Intervenors-Defendants-  
Appellees*

On Appeal from the United States District Court  
for the Western District of Tennessee

[Decided and Filed April 18, 1983]

Before: ENGEL and KRUPANSKY, Circuit Judges; and  
BROWN, Senior Circuit Judge.

KRUPANSKY, Circuit Judge. This is an appeal by Grenada Bank (Bank) from an order entered in the Western District of Tennessee which held that the Bank could not satisfy a judgment against defendant Robert Willey (Willey) through the execution upon, and sale of, Willey's purported 41% interest in a limited partnership because Willey transferred or assigned his interest to Clarence Day and Lawson Apperson (Intervenors) prior to the time of the attempted execution. The Bank here contends that the sale of the partnership interest by Willey to the Intervenors is void or voidable.

The operative facts were largely a matter of stipulation below. In September, 1980, Willey owned a 38% limited

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interest and a 2% general interest in Huntingdon Associates, Ltd. (Huntingdon), a Tennessee limited partnership, duly recorded under the laws of that state, which partnership sought to develop HUD/FHA — assisted apartment projects. On September 25, 1980, the Bank obtained a judgment against Willey and others in United States District Court for the Northern District of Mississippi.

Approximately nine months later, in June, 1981, an Amended and Restated Partnership Agreement for Huntingdon was executed whereby the Intervenorers infused one million dollars of new capital into Huntingdon and thereby held an aggregate 99.7% partnership interest. This addition of funds and investors reduced Willey's proportional share of ownership from 41% to .1%. The Amended and Restated Partnership Agreement was not, however, immediately recorded.

In July, 1981, the Bank recorded its Mississippi judgment against Willey in Tennessee. Subsequently Huntingdon recorded the newly partnership agreement, reflecting Willey's reduced ownership as a percentage of the total, in the appropriate county office. The Bank thereupon moved for an order directing the sale of Willey's interest in Huntingdon to satisfy the admittedly valid judgment.

At trial, the Intervenorers contended that they acquired, by virtue of the revised agreement executed in June, a 99.7% ownership interest in Huntingdon which precluded a sale of 41% of the partnership to satisfy the judgment against Willey recorded in July, 1981. The Bank argued that the transaction between Willey and the Intervenorers (1) was void because government approval for the new partnership was not obtained within sixty days as contem-

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plated by paragraph seven of the Subscription Agreement,<sup>1</sup> executed simultaneously with the Amended and Restated Partnership Agreement and (2) was ineffective as to third persons because the Amended Partnership Agreement, which the Bank characterized as "substituting" the Intervenor for Willey as limited partners, was not immediately recorded. The district judge initially construed the sixty day approval clause as a termination provision, which all parties herein impliedly waived, and not as a condition subsequent to an executory contract. The court further found that registration did not bear upon the right to transfer partnership interests, but went to the right of any unrecorded partner to claim the status of "limited partner."

The present appeal ensued.

The Bank would have this Court determine what rights to income or management may validly be assigned or transferred by a limited partner and what disabilities are incurred by the failure to record such transfers or assign-

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<sup>1</sup>Paragraph seven provides as follows:

7. Simultaneously with the execution of this Agreement, Willey, Murley, BCC, Day and Apperson have executed the Amended Certificate and Restated Agreement of Limited Partnership, a copy of which is attached hereto as Exhibit A ("Amended Partnership"). Day and Apperson will promptly submit to HUD/FHA fully completed HUD/FHA Forms 2530, 2013-S and 2417 for approval of Day and Apperson by HUD/FHA as partners, and immediately upon such approval, Murley and Willey will cause the Amended Partnership Agreement to be properly recorded in the Office of the official recorder of each County in each State in which the Partnership is doing business.

If Day and Apperson are not so approved as partners by HUD/FHA within sixty (60) days after the date of this Agreement, then, **Southern shall immediately return all of the considerations referred to in Sections 3 and 4 above unto Day and Apperson, respectively, and the Amended Partnership and this Agreement shall terminate, be void and of no effect.** (Emphasis added).

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ments. These inquiries, however, are premature and incorporate a fundamental misperception of the actual legal character of the transaction *sub judice* in that the assignments of error assume, incorrectly, that Willey sold, transferred or assigned his 41% interest in the original Huntingdon partnership to the Intervenor. In fact, Willey did not sell, transfer or assign any interest; rather, the partnership was expanded and reformed by the addition of fresh capital and new investors such that Willey's *continuous* interest in the partnership, expressed as a percentage of total ownership, was reduced from 41% to .1%. This basic conclusion, conceded by the Intervenor before this Court, was not perceived by the district court which based its order denying the Bank's motion for a sale of Willey's interest in Huntingdon upon a finding that the "assignment" or "transfer" of Willey's interest occurred prior to the recording of judgment and so defeated the Bank's claim. Inasmuch as the proper legal characterization of the transaction herein is fully apparent from the stipulated facts and is a matter of law rather than an additional finding of fact, it is not improper to reach this result on appeal without a remand. *Pullman-Standard v. Swint*, — U.S. —, 102, S.Ct. 1781 (1982). See also *K & M Joint Venture v. Smith International, Inc.*, 669 F.2d 1106, 1111-12 (6th Cir. 1982).

Viewed in its proper light, the Amended and Restated Partnership Agreement did not remove or destroy assets previously liable to sale in satisfaction of the judgment; rather, the Agreement merely reflected that Willey's continuous interest declined in relative portion to the total value of the partnership. However, inasmuch as the revised agreement had not been filed at the time the Bank's judgment was recorded in Tennessee, this Court must address the issue of how, if at all, the failure to record the revised

partnership agreement effected the right of the Bank to levy against Willey's interest in Huntingdon Associates, Ltd.

Cases construing the Uniform Limited Partnership Act<sup>2</sup> are in accord that a failure to comply with the statutory requirements for establishing a limited partnership, such as recording, does not void the creation of an association between the partners, but does preclude those partners from claiming the status of *limited* partners when dealing with third parties who are without notice of the limited liability due to a failure to record. *Peerless Mills v. American Tel. & Tel. Co.*, 527 F.2d 445, 449, n.1 (2d Cir. 1975). (cases cited therein). In the present case, Willey is a putatively limited partner under the revised agreement. However, inasmuch as the new partnership was not recorded in Tennessee at the time the Bank recorded its judgment against Willey, neither Willey nor the Intervenor may here claim that Willey possesses only the status of a limited partner; Willey, for purposes of the Bank's judgment, is a general partner owning .1% of the value of Huntingdon. The Bank, accordingly, may levy against that interest to satisfy its judgment.

The judgment of the district court is hereby REVERSED and the instant cause REMANDED with instructions to enter an appropriate order.

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<sup>2</sup>Tennessee is one of 44 jurisdictions which has adopted the Uniform Limited Partnership Act. T.C.A. Sections 61-2-101 to 61-2-103 (effective 1-1-22). As with most jurisdictions which have adopted the Act, Tennessee, by statute, has specifically authorized recourse to judicial opinions from those other jurisdictions utilizing the Act so "as to effect its general purpose to make uniform the law of those states which enact it." T.C.A. Section 61-2-127(b). Accordingly, citation to opinions from companion jurisdictions is generally considered persuasive.



**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**No. 81-5913**

GRENADA BANK, d/b/a

COAHOMA BANK ..... *Plaintiff-Appellant*

vs.

ROBERT WILLEY, SR., et al. .... *Defendants*

HUNTINGDON ASSOCIATES, LTD.;

CLARENCE C. DAY and LAWSON

F. APPERSON ..... *Intervenors-Defendants-  
Appellees*

Before: ENGEL and KRUPANSKY, Circuit Judges; and  
BROWN, Senior Circuit Judge.

**JUDGMENT**

(Filed April 18, 1983)

ON APPEAL from the United States District Court for  
the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from  
the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here  
ordered and adjudged by this court that the judgment of  
the said District Court in this case be and the same is hereby  
reversed and the cause is remanded with instructions.

It is further ordered that Appellant recover from  
Appellees the costs on appeal, as itemized below, and that  
execution therefor issue out of said District Court, if  
necessary.

**ENTERED BY ORDER OF THE COURT.**

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No. 81-4477

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

GRENADA BANK, a Mississippi banking  
corporation, d/b/a "Coahoma Bank" . . . *Plaintiff-Appellant*

v.

ROBERT WILLEY, SR., et al . . . . . *Defendants-Appellees*

[Filed Dec. 20, 1982]

Appeal from the United States District Court for the  
Northern District of Mississippi.

Before GARZA, TATE and WILLIAMS, Circuit Judges.

GARZA, Circuit Judge:

This appeal arises out of Grenada Bank's attempt to satisfy its judgment against Robert Willey through the execution and sale of a 47% interest in five Mississippi partnerships. On August 31, 1981, the district court ordered the U.S. Marshal to conduct a public sale of Mr. Willey's 47% interest in partnerships. Upon motion by Mr. Day and Mr. Apperson, appellees, the court allowed said parties to intervene and after a hearing revoked its order directing a judicial sale of Mr. Willey's interest. Grenada Bank contends the court erred in revoking the order.

On September 25, 1980, Grenada Bank obtained a judgment against Robert Willey and the other promoters: Linda B. Willey, John F. Watson, John T. James, Jr., Marco Planning Co., and Southern Consulting Corporation. Prior to June 3, 1981, Mr. Willey owned a 47% limited interest and a 2% general interest in each of six limited partnerships which had been formed for the purpose of construct-

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ing and owning separate apartment projects. On June 3, 1981, the projects were suffering various financial problems. A Subscription Agreement and an Amended and Restated Partnership Agreements were executed whereby Mr. Day and Mr. Apperson, appellees, agreed to contribute a total of \$1,000,000 directly to the respective partnerships. As a result, Day and Apperson received a 99.7% aggregate interest in each of the partnerships while Mr. Willey's interest was reduced to .1%

On June 17, 1981, Grenada Bank obtained another judgment against Mr. Willey and the other promoters for \$104,833.08. Between June 22 and June 26 the promoters recorded, in the Chancery Clerk's offices of various Mississippi counties, amended certificates of partnership reflecting a 47% limited partnership interest of Mr. Willey. On June 23, 1981, it was certified to the Department of Housing and Urban Development that Mr. Willey owned a 47% interest in the partnership. On June 29, 1981, Day and Apperson completed their capital contribution to the partnerships by contributing \$400,000 in cash and \$600,000 in negotiable promissory notes.

On July 22 Grenada Bank began the process of selling Mr. Willey's interest by making application for writ of execution. On June 23, 1981, the district court judgment was enrolled on the judgment rolls of various Mississippi counties where the limited partnership had interest, and certified copies of the writs of fieri facias were recorded in the appropriate Chancery Clerk's offices of these counties. Writ of fieri facias was served on Mr. Willey on July 29. On August 21 Grenada Bank moved for an order directing sale of a 47% interest in the partnership. On August 31, 1981, the district court ordered a judicial sale of a 47%

interest in each of the partnerships allegedly belonging to Mr. Willey.

On September 2, 1981, Day and Apperson became aware of the judgment against Mr. Willey and recorded amended certificates of limited partnership, reflecting their interest pursuant to the June 3 Subscription Agreement, in the appropriate Chancery Clerk's offices. On October 26, 1981, the Department of Housing and Urban Development approved Day and Apperson as required under the Subscription Agreement.

On October 30, 1981, the trial court authorized Day and Apperson to intervene. The district court held that the execution of the June 3, 1981, Subscription Agreement reduced Mr. Willey's interest in the partnership to .1%. Therefore, on August 31, 1981, when the sale of Mr. Willey's 47% interest was ordered Mr. Willey only had a .1% interest in the partnership. The district court, consequently, revoked the prior order directing the United States Marshal to conduct a public sale of Mr. Willey's 47% interest in the Mississippi limited partnerships. Judge Senter went on to find that since Mr. Willey's interest in the partnership was an intangible personal property interest a writ of garnishment, and not a writ of fieri facias, must be used to reach the property.

Grenada Bank raises two issues on appeal: (1) whether the district court erred in holding that the transfer of partnership ownership to Day and Apperson cut off Grenada Bank's ability to reach the 47% interest in the partnership previously owned by Mr. Willey; and (2) whether the district court erred in holding that garnishment, and not a writ of fieri facias, is the proper means of reaching a limited partnership interest. We find the district court did not err.

Mr. Willey's interest in the partnership was personal property. Miss. Code Ann. §79-13-37. See *Myrick v. Second National Bank of Clearwater*, 335 So.2d 343, 344 (Fla. Dist. Ct. App. 2d Dist. 1976). The interest is intangible personal property since an interest in a partnership is a nonphysical asset which exists only in connection with the assets or value of the partnership. "The lien of an enrolled judgment does not attach to intangible property." *Simmons-Belk, Inc. v. May*, 283 So.2d 592 (Miss. 1973). The lien attaches when the writ, subjecting the intangible property to the judgment, is served. See *id.* at 594. Thus, the lien could not possibly have attached until July 29, 1981, when the writ was served on Mr. Willey.<sup>1</sup> Day and Apperson, by executing the Subscription Agreement and Amended and Restated Partnership Agreements on June 3, 1981 and by contributing \$1,000,000 directly to the partnerships on June 29, 1981, received a 99.7% interest in the partnerships free of any lien. The district court, therefore, correctly revoked its order directing the sale of Mr. Willey's 47% interest in the partnerships.

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<sup>1</sup>The writ served on July 29, 1981, was a writ of fieri facias. As will be shown below, a writ of fieri facias is not a proper means of reaching an interest in a limited partnership. The lien, therefore, could not have attached on July 29, 1981.

## A-11

Section 79-13-43 of Mississippi Code Annotated provides:

(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt;

....

The question before this court is whether a writ of garnishment or a writ of fieri facias is the proper means of charging the interest of the limited partner.

A writ of fieri facias directs the sheriff to take physical possession of the property. See *D. Dobbs, Remedies* 10 (1978). The sheriff cannot physically possess an interest in a limited partnership. A writ of fieri facias, therefore, is not a proper means of charging the interest of a limited partner.

In executing a writ of garnishment the sheriff does not take physical possession of the property. *First National Bank of Hattiesburg v. Ellison*, 135 Miss. 42, 99 So. 573, 574 (1924). Garnishment is the process by which assets due a judgment debtor by third persons are attached. *Id.* Here the asset due is Mr. Willey's interest in the limited partnership; the judgment debtor is Grenada Bank; and the third persons are the limited partnerships. Grenada Bank could have garnished Mr. Willey's interest in the limited partnerships by serving the partnerships. Garnishment, consequently, is the proper means of charging the interest of the limited partnership. See *Simmons-Belk, Inc. v. May*, 283 So.2d 592, 594 (Miss. 1973); 6 Am. Jur. *Attachment and Garnishment* §187.

Grenada Bank's brief presents several arguments against garnishment. Appellant asserts that Rule 69(a) of the Federal Rules of Civil Procedure precludes the use of garnishment for enforcement of a judgment for money damages. Rule 69 does not preclude the use of garnishment for enforcement of a judgment.<sup>2</sup> See *Juneau Spruce Corporation v. International Longshoremen's and Warehousemen's Union*, 131 F. Supp. 866, 869 (D. Hawaii 1955).

Grenada Bank contends that a writ of garnishment is an inadequate remedy in that it only reaches the right to receive cash flow and does not allow the creditor to share in tax losses. In essence, appellant argues that a creditor of a limited partner must be afforded a remedy which will allow the creditor to become a substitute limited partner. Mississippi Code §79-13-37 provides that a limited partner's interest may be assigned, but the assignee is only entitled to reach the share of the profits or other income or return of contribution to which the assignor would be entitled; an assignee becomes a substitute partner only if all members

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<sup>2</sup>Appellant relied on the first sentence of Rule 69 which states: "Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise." Appellant argues that this sentence makes a writ of execution the exclusive means of enforcing a judgment. Such a reading would conflict with the next sentence which states:

The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

Inasmuch as no applicable federal statute governs, the practices and procedures of Mississippi must be used in executing the judgment. A writ of execution cannot be the exclusive means of enforcing a judgment since Mississippi practice and procedure provides for garnishment.

of the limited partnership consent or if the partnership agreement gives the assignee that right. The district court could thus assign a creditor the right to reach the share of the profits or other income or return of contribution to which the debtor would be entitled. The district court, however, could not make the creditor a substitute limited partner. The appellant's proposed remedy, therefore, would be contrary to Mississippi law.<sup>8</sup>

All of Grenada Bank's contentions are without merit.

AFFIRMED.

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<sup>8</sup>In oral arguments and by supplemental letter Grenada Bank discussed a companion case pending in the United States Court of Appeals for the Sixth Circuit. The case arose out of attempted execution on the same final judgment as the case at hand, and a final order was issued in the United States District Court for the Western District of Tennessee. The district court in its Order on Motion for Order Directing Execution Sale, noted that "in Tennessee the execution used to enforce a collection of a money judgment or decree is called *fieri facias*." The court's order was not based on this statement. The court's denial of the creditor's motion for execution sale was based on the fact that the transfer of partnership interest occurred before the issuance of the writ. Most importantly the court was interpreting Tennessee law and not Mississippi law. We, therefore, do not find this case persuasive.



**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**NO. 81-5913**

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GRENADA BANK, A Mississippi Corporation, DBA  
"COAHOMA BANK",

*Judgment Creditor-Appellant,*

vs.

ROBERT WILLEY, SR., LINDA B. WILLEY, JOHN F.  
WATSON, JOHN T. JAMES, JR., MARKO PLANNING  
COMPANY, INCORPORATED, A Tennessee Corporation,  
and SOUTHERN CONSULTING CORPORATION,

A Tennessee Corporation,

*Judgment Debtors-Appellees,*

vs.

HUNTINGDON ASSOCIATES, LTD., CLARENCE C. DAY,  
and LAWSON F. APPERSON,

*Intervenors-Appellees.*

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Appeal from the United States District Court for the  
Western District of Tennessee, Western Division  
Honorable Robert M. McRae, Jr., Judge

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**APPELLANT'S BRIEF**  
(Filed March 15, 1982)  
(Excerpt)

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**Argument**

1. The Court's conclusion is contrary to the express language of an applicable Tennessee statute.

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A mere "assignment" of a limited partnership's interest does not transfer the entire bundle of rights to which a limited partner is entitled, but just the right to receive cash flow.

TCA §61-2-120(c) reads in part as follows:

" . . . he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled . . . "

An assignee only becomes a substituted limited partner, and only becomes entitled to the remaining bundle of his rights, in addition to the right to receive cash flow, after other statutory requirements have been met. The applicable statute reads in part as follows:

TCA §61-2-120:

"(d) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the Certificate, gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the Certificate is appropriately amended in accordance with §61-2-125.

(f) The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the Certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from

liability to the partnership under §§61-2-106 and 61-2-117."

These latter requirements of the statute were not met until September the 2nd, 1981, well after issuance and service of the Writ of Fieri Facias on Promoter Robert Willey, Sr.

2. The Court's conclusion ignores the nature of the limited partnership interest as a real estate security, as an investment medium and as a tax shelter device.

The real estate securities industry has long recognized limited partnership interest as securities and as perhaps the most useful vehicle for investing in real estate.

"Limited partnerships often provide the most useful entity for investing in real estate . . . the tax shelter aspect of the investment results from the ability to offset excess tax deductions generated by the partnership against the investor's other income. Although the Tax Reform Act of 1976 curtailed the utility of any tax shelter vehicles, the tax benefits of investing in real estate were largely left intact."

Lynn, Goldberg & Abrams, at page IX

"Limited partnership interests are considered securities, and thus the issuance, sale and transfer are subject to Federal and State securities laws."

Lynn, Goldberg & Abrams, at page 133

In a modern limited partnership designed as a tax shelter vehicle, a limited partnership's right to receive cash flow is perhaps one of the least valuable property rights.

"A major purpose in using the limited partnership format for an investment in real estate is to permit the tax benefits to flow through to the investor. The partnership's depreciation of the cost of its assets generally provides three important benefits to the investor. The first is deferral of tax liability on partnership income which often permits tax-free cash flow in early years. The second is limited conversion of ordinary income into capital gain, subject to recapture income on the disposition of partnership assets for an amount in excess of the basis of the property. The third is that use of depreciation, especially accelerated depreciation, often permits deductions in excess of the income from the partnership."

Lynn, Goldberg & Abrams at page 67.

"Real estate syndication investors usually hope that a syndication will have sufficient accelerated depreciation to shelter the cash flow from the property so that, subject to the minimum and maximum taxes, the distribution of cash will not be taxable. They often also hope that syndication will generate excess deductions to offset income that they have earned in other ventures."

Lynn, Goldberg & Abrams at page 67.

3. The Court's conclusion, making new law, adversely affects the marketability of real estate securities.

It appears that there is only one case in point, and that from another jurisdiction. The referred-to case is *Bank of Bethesda v. Koch*, 408 A.2d 767 (MD 1979). The

holding of this case should not be applied here for the following reasons:

a. The case is no authority. It involves Maryland substantive and procedural law, whereas in the instant case Tennessee substantive and Federal procedural law applies. The Maryland case involves execution under State Court judgment and State Court procedure, whereas the instant case involves execution under Federal Court judgment and Federal procedure.

b. The case is based upon different facts. It involves apparently a valid assignment of a partnership interest. Here, the validity of the prior assignment is in issue.

c. The Maryland case is bad law. It adversely affects the marketability of real estate securities, severely restricting such marketability. It also entirely misunderstands the nature of limited partnership interests as a real estate security, as an investment medium and as a tax shelter device.

Reliance upon public records is of paramount importance to the securities-buying public.

"Since the relative stakes of the different partners and the possibility of changes in membership are of concern to the public, the Certificate must also describe the arrangement for profit sharing and for compensation by way of income; must state how and if a limited partner may substitute another person in his place, including any terms and conditions; and must disclose any right of the partners to admit other limited part-

ners. Additional limited partners are admitted by filing an amendment to the original Certificate."

Lynn, Goldberg & Abrams, at page 4.

The Tennessee version of the Uniform Limited Partnership Act recognizes the need of the public to be able to rely upon public records. It expressly provides that an investor does not become a limited partner until the public records properly reflect the change.

TCA §61-1-120(d) through (g).

4. The Court's conclusion ignores the express language of a document carefully drafted by knowledgeable investors.

Tennessee law has long recognized that a conditional contract is one whose very existence and performance depends upon the happening of some contingency or condition expressly stated therein.

*Petway v. Loew's Nashville & Knoxville Corporation*, 117 S.W.2d 975 (TN 1938);

*Buchanan v. Johnson*, 595 S.W.2d 827 (TN 1979).

Where such conditional contract is for the conveyance of personal property, no conveyance takes place where the condition has not been met.

*Nashville & N.W. R. Co. v. Jones*, 42 Tenn. 574 (1865).

The latter case involved conveyances of stock pursuant to a stock subscription agreement. The stock subscription agreement was subject to a condition. The condition was not met. It was held that no stock had transferred. The Court reasoned as follows:

"For the conditional subscriber was either never a stockholder, and member of the company, if the condition was a precedent and not performed, or ceased to be a stockholder and member on the violation of the condition."

At page 575.

It is true that an express condition in a written contract may be waived subsequently by parol agreement, but Tennessee law has been consistent in holding that such waiver can only occur by bilateral action evidenced by a clear course of dealings between the parties.

*Balderacchi v. Ruth*, 256 S.W.2d 390 (TN 1953);

*Real Estate Management v. Giles*, 293 S.W.2d 596 (TN 1956);

*Guilbert v. Phillips Petroleum Company*, 503 F.2d 587 (CA 6, 1974).

Here, no dealings occurred between Promoters and Investors between August the 2nd, 1981, the date the Subscription Agreement expired by its own terms, and August 24, 1981, the date the Writ of Fieri Facias was served on Promoter and Judgment-Debtor Robert Willey, Sr.

The Subscription Agreement is ineffective for another reason. By the terms of said agreement, the partnership attempts to convey an interest in itself, which, it is incapable of doing, as a matter of law.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

GRENADA BANK, a Mississippi Banking  
Corporation, d/b/a "COAHOMA BANK" ..... *Plaintiff*

vs. Civil Action No. Misc. 81-35

ROBERT WILLEY, SR., et al ..... *Defendants*

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**NOTICE OF APPEAL**  
(Filed December 1, 1981)

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Notice is hereby given that Plaintiff hereby appeals to the United States Court of Appeals for the Sixth Circuit from the final judgment entered in this action on November 20, 1981.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

GRENADA BANK, a Mississippi Corporation,  
d/b/a COAHOMA BANK ..... *Plaintiff*

vs.                      No. Misc. 81-35

ROBERT WILLEY, SR., et al ..... *Defendants*

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**JUDGMENT**

(Filed November 27, 1981)

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This action came on for consideration before the Court, Honorable Robert M. McRae, Jr., United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered.

It is Ordered and Adjudged that the motion for an order for the execution sale of Defendant, Robert Willey, Sr.'s partnership interest in Huntingdon Associates, Ltd. is denied.

Dated at Memphis, Tennessee, this 25th day of November, 1981.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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GRENADA BANK, A Mississippi Corporation,  
d/b/a COAHOMA BANK ..... *Plaintiff*

vs. No. Misc. 81-35

ROBERT WILLEY, SR., et al ..... *Defendants*

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**ORDER ON MOTION FOR ORDER DIRECTING  
EXECUTION SALE  
(Filed November 20, 1981)**

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The Grenada Bank, a judgment creditor of Mr. Willey, has moved this Court to order a judicial sale of Mr. Willey's alleged 2% general interest and 38% limited interest in a Tennessee limited partnership registered as Huntingdon Associates, Ltd., by virtue of a writ of *fieri facias* issued from this Court on July 29, 1981, pursuant to judgments obtained in the U. S. District Court for the Northern District of Mississippi. Huntingdon Associates, Ltd., Clarence C. Day, and Lawson F. Apperson have been allowed to intervene in this action and have opposed any order directing an execution sale of Willey's interest in the limited partnership. A hearing was held on the judgment creditor's motion before this Court on November 6, 1981, with the creditor Bank and intervenors presenting affidavits, records, and arguments on the matter. This order reflects the holding of this Court upon consideration of the record.

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The basic facts and chronology surrounding this action appear undisputed, the ones relevant to the motion at hand being as follows:

September 25, 1980 Grenada Bank obtained judgment against Robert Willey and others in the U. S. District Court for the Northern District of Mississippi for \$164,975.06.

June 3, 1981 Clarence C. Day and Lawson F. Apperson, together with Willey and others, executed a Subscription, and an Amended and Restated Partnership Agreement, pertaining to five Mississippi limited partnerships and the Tennessee limited partnership in question, wherein it appears Day and Apperson acquired directly from each partnership an aggregate 99.7% interest in each partnership, which transaction was not recorded at the time.

June 17, 1981 The Grenada Bank obtained an additional judgment against Willey and others in the U. S. District Court for the Northern District of Mississippi for \$104,833.09.

June 29, 1981 Commercial and Industrial Bank of Memphis acknowledged receipt of the total consideration in cash and notes of \$1,000,000 from Mr. Day as required by the Subscription Agreements.

July 22, 1981 Issuance of writ of *fieri facias* from the U. S. District Court for the Northern District of Mississippi in connection with the Mississippi partnership.

July 29, 1981 Recording of the Mississippi judgments in the U. S. District Court for the Western District

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of Tennessee, issuance of writ of *fieri facias* describing a 38% limited interest and a 2% general interest of Mr. Willey in Huntingdon Associates, Ltd., and recording of the judgments in the Register's Office of Shelby County and Carroll County, Tennessee.

August 24, 1981 Service of the writ of *fieri facias* on the judgment debtor, Willey.

August 31, 1981 Hearing in the U. S. District Court for the Northern District of Mississippi on the Grenada Bank's Motion for an Order Directing Judicial Sale on Willey's interest in the Mississippi partnership, and the issuance of an Order by the Court directing a sale to be held.

September 1 and 2, 1981 Recordation in the appropriate offices of the Amended and Restated Certificates of Limited Partnership for each of the six partnerships reflecting the ownership interest of Day and Apperson as an aggregate 99.7% thereof.

September 2, 1981 First knowledge of the interests of the Grenada Bank alleged by Mr. Day and Mr. Apperson.

September 17, 1981 Filing of Motion with the U. S. District Court for the Western District of Tennessee for Order directing a sale of the interest of Willey in the Tennessee limited partnership.

October 28, 1981 Rehearing of the motion, and order issued by the U. S. District Court for the Northern District of Mississippi directing a sale, and issuance of an order by the Court withdrawing the earlier

order authorizing a sale, and ruling that the interests of Day and Apperson in the Mississippi limited partnership were superior to those of the Grenada Bank as a judgment creditor.

The primary thrust of the intervenors' contention in opposition to the judgment creditors' motion is that the prior assignment of the partnership interest defeats any attempted seizure of the interest subsequent to said transfer. The judgment creditor responds, contending that intervenors' rationale fails for three reasons: that the Subscription Agreement purporting to convey the partnership interest is void as written because the partnership purports to convey an interest in itself which, as a matter of law, it is incapable of doing; that the Subscription Agreement contained a self-destruct clause consisting of a condition to the effect that certain governmental approval of stated partnership goals must be had within a 60-day period which fell due before such approval was given; and that the Agreement is ineffective as to third parties because of failure to record the change in the partnership pursuant to the language of the Limited Partnership Act.

As to the first two contentions of the judgment creditor, the Court upholds the agreement because it is found to have been an arm's length agreement between competent businessmen, there was adequate consideration and no trace of overreaching. In looking to substance over the technical form of the contract, the Court notes that had this contract been entered into for the sale of goods, the Court, under the auspices of the Uniform Commercial Code, could have supplied the necessary ingredients to make the contract binding on each party had there been a dispute. The Court finds that in the transfer of the partner-

ship interest it was the intent of the parties to deal personally with one another in the redistribution of the partnership interests. Hence the fact that the partnership, Huntingdon Associates, Ltd., purported to transfer certain interests should not work as a bar to effecting the obvious intent of the parties. Additionally, the Court finds the fact that nothing was done upon the failure to meet the 60-days requirement of approval of the partnership indicates that the intent of the parties if in fact the contract did self-destruct as the judgment creditor contends, was to mutually ratify and re-enter into the same agreement regardless of said failure of the 60-day approval. This Court will not allow the obvious intentions of the parties to be thwarted by such a technicality imposed through a collateral attack upon the agreement.

As to judgment creditor's third contention that failure to file under the limited partnership act voided the effect of the subscription agreement to third persons, this Court finds that the intent of the legislature in passing the recording provision was to afford a means whereby certain partners may limit their liability. Consequently, failure to record has no bearing upon the validity of the transfer of partnership interests.

The Court notes that in Tennessee the execution used to enforce a collection of a money judgment or decree is called *fieri facias*. This execution is used where goods and chattels or real estate, or both, are to be levied upon and sold. Subject to exceptions not apparent in this case, an execution from a court of record is a lien upon all leviable property of the debtor from the date of its teste — which, in Federal Court, is the date the writ was issued — and avoids all intervening sales or assignments. *John Weiss,*

*Inc. v. Reed*, 118 S.W.2d (Tn. App. 1938). In this instance the Court finds that June 3, 1981, marked the date a valid transfer of Willey's partnership interest was made to the intervenors, and that execution on the Mississippi judgment did not issue in this jurisdiction against the debtor until July 22, 1981. It is therefore held that, since transfer of Willey's partnership interest was made prior to the issuance of the writ of *fieri facias*, said interest no longer constituted leviable property of the debtor, and the judgment creditor's motion as to an execution sale of Willey's 2% general and 38% limited partnership interest in Huntingdon Associates, Ltd. is to be denied. IT IS SO ORDERED.

ENTER: This the 20th day of November, 1981.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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GRENADA BANK, A Mississippi Corporation,  
d/b/a COAHOMA BANK ..... Plaintiff

vs. No. Misc. 81-35

ROBERT WILLEY, SR., et al ..... Defendants

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**MOTION FOR ORDER DIRECTING EXECUTION SALE  
(Filed 9-18-81)**

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(excerpt)

Comes now the Plaintiff/Judgment Creditor, and moves the Court for an Order Directing Execution Sale as follows:

1. *Property.* Interest in one (1) Tennessee Limited Partnership as described in Writ of Fieri Facias issued by the Clerk of this Court on July 29, 1981, a copy of which is enclosed as Exhibit "1" to this Motion.

2. *Judgment Debtor.* The property belongs to Robert Willey, Sr., one of the Judgment Debtors in this cause.

3. The Order shall direct the United States Marshall to conduct a public sale of the property in question in accordance with the provisions of 28 U.S.C. §2001, et seq.

4. The Order shall direct the United States Marshall to publish a Notice of Sale, three (3) times, in the county,



in a newspaper having a general circulation in "*The Daily News*", at Memphis, Tennessee.

5. The property shall be sold, the interest in said Limited Partnership as a whole, at public sale in accordance with the provisions of §26-5-101, TCA, as follows: At 10:00 a.m., on Wednesday, December 9, 1981, at the North Door of the Federal Building, 167 North Main Street, Memphis, Tennessee 38103, and the United States Marshall shall post a notice of said sale at five (5) different places in Shelby County, Tennessee.

6. The Judgment Creditor, Grenada Bank, may bid a credit against its judgment and interest thereon, cost and expenses, without tender of cash.

7. The terms of the sale as to all other persons or parties bidding shall be as follows: For cash.

8. The United States Marshall shall make his report of sale within ten (10) days from the date of sale.

9. The United States Marshall shall apply the proceeds of sale first to the expenses of sale, then to Plaintiff's costs in this suit, and then to payment and satisfaction of this judgment as set forth herein. If the property shall sell for more than what is sufficient to pay off and satisfy said sums of money, then the United States Marshall shall pay over the excess to the Judgment Debtor.

10. Upon sale of the property by the United States Marshall, all right, title, claim, interest estate, equity of redemption, statutory right of redemption, any other rights of Defendant, Robert Willey, Sr., and all persons claiming by, through or under him, shall be extinguished and forever foreclosed.

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11. The general partners of the Limited Partnership, Gerald D. Murley, and Robert Willey, Sr., shall be directed to effect the necessary changes on the books of the partnership, and on all partnership records, including required public records, showing the purchaser at the public sale as the new Limited Partner.

12. The Plaintiff shall have all of its cost and all Writs necessary to execute the terms of this Order.

**WRIT OF FIERI FACIAS**

**[Issued July 29, 1981]**

**TO THE MARSHALL, WESTERN DISTRICT OF  
TENNESSEE: GREETINGS:**

YOU ARE HEREBY COMMANDED that of the goods, chattels, lands, and tenements of Robert Willey, Sr.\*\* or a debt owed said defendant by N/A, if to be found in your district, you cause to be levied on for a judgment which was entered by the United States DISTRICT COURT FOR THE Northern District of Mississippi against Robert Willey, Sr., et al on the 25th day of September, 1980, and the 17th day of June, 1981, which judgments were recorded in this District on July 24, 1981 in the amount of \$269,808.14 plus accrued interest.

You are to have these monies ready to render to the Clerk of this Court upon receipt as the law directs.

This 29th day of July, 1981.

J. Franklin Reed, Clerk

\*\*including all of his partnership interest in "Huntingdon Associates, Ltd.", a Tennessee limited partnership, the original certificate of which was recorded on June 9th, 1979, in Deed Book 194, pages 440-456, Register's Office of Carroll County, Tennessee, and the last amendment thereto was recorded April 7th, 1981, Deed Book 203, pages 748 et seq., Register's Office of Carroll County, Tennessee, consisting of a 3% General Partnership interest and a 38% Limited Partnership interest.

**SUBSCRIPTION AGREEMENT FOR  
HUNTINGDON ASSOCIATES, LTD.**

**(excerpt)**

THIS AGREEMENT made and entered into this 3rd day of June, 1981, by and between SOUTHERN CONSULTING CORPORATION ("SCC"), a Tennessee corporation, ASSOCIATED SERVICES GROUP OF AMERICA, INC. ("Associated"), a Tennessee corporation, GERALD D. ("Murley"), an individual resident of Shelby County, Tennessee, ROBERT WILLEY, SR., ("Willey"), an individual resident of Shelby County, Tennessee, SCC, Associated, Willey and Murley sometimes hereinafter being jointly and severally referred to as "Southern", McNEILL MORTGAGE & INVESTMENT CO., INC. ("McNeill"), a Tennessee corporation, CLARENCE DAY ("Day") and LAWSON F. APPERSON ("Apperson"), Day and Apperson being individual residents of Shelby County, Tennessee, and sometimes hereinafter jointly and severally referred to as "Subscribers"; BRINDLEY CONSTRUCTION COMPANY, ("BCC"), a sole proprietorship, and HUNTINGDON ASSOCIATES, LTD. ("Partnership"), a Tennessee limited partnership, presently composed of Murley, Willey and BCC;

**WITNESSETH:**

WHEREAS, Southern has filed preliminary proposals in response to the United States Department of Housing and Urban Development ("HUD/FHA") notification of fund availability pursuant to Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974; and

WHEREAS, Southern's proposal for the construction of a 40-family unit apartment complex in Huntingdon,

Tennessee, to be known as Hillcourt Apartments, was selected for funding by HUD/FHA pursuant to Title 24, of the Code of Federal Regulations, Part 880 — Section 8, Housing Assistance Payments Program for New Construction (said project being identified as No. 086-35131-PM-L8); and

WHEREAS, Southern did heretofore cause the Partnership to be formed in accordance with the laws of the State of Tennessee and properly recorded in all governmental offices; and

WHEREAS, Southern did cause the Partnership to enter into various agreements with McNeill wherein McNeill has made a commitment to the Partnership to lend to it construction funds in a sum up to \$1,110,000 and has procured a commitment from the Government National Mortgage Association ("GNMA") to provide permanent financing for the Project; and

WHEREAS, Southern is experienced in the construction and management of projects insured by HUD/FHA and funded in accordance with Section 8 of the United States Housing Act of 1937, as amended, and has done all things necessary to procure adequate funding for construction of the Project, and is prepared to proceed to obtain the initial endorsement for insurance by HUD/FHA to construct the Project and thereafter obtain acceptance and final endorsement by HUD/FHA; and

WHEREAS, Subscribers are knowledgeable and experienced investors, and based upon the warranties and representations herein made by Southern do desire to acquire an interest in the Partnership all as hereinafter set forth, with Day acquiring interest as a limited partner and with Apperson acquiring interest as a general partner;

WHEREAS, Day and Apperson are familiar with the Tennessee Securities Act of 1980 (T.C.A. Section 48-16-101 et seq.) and do herewith waive the applicability of the same to the extent permitted by law;

NOW, THEREFORE, for and in consideration of mutual agreements contained herein the parties do agree as follows:

1. Day does herewith purchase a 97.7% interest in the Partnership as a Limited Partner, and the Partnership does herewith sell unto Day a 97.7% interest in the Partnership, all upon the terms and conditions herein set forth.

2. Apperson does herewith purchase a 2% interest in the Partnership as a General Partner, and the Partnership does herewith sell to Apperson a 2% interest in the Partnership, all upon the terms and conditions herein set forth.

3. The consideration for the acquisition by Day of his interest in the Partnership shall be:

- a. The sum of \$93,240.00 in cash;
- b. The sum of \$32,077.98 represented by Day's promissory note to the Partnership bearing interest at the rate of 18% per annum due and payable on January 1, 1982;
- c. The sum of \$30,012.88 represented by Day's promissory note to the Partnership bearing interest at the rate of 18% per annum due and payable on June 1, 1982;
- d. The sum of \$55,062.99 represented by Day's promissory note to the Partnership bearing interest at the rate of 18% per annum due and payable on January 1, 1983, or upon acceptance of the completed Project by HUD/FHA and final endorsement for insurance, whichever shall last occur.

Day shall not be obligated or responsible to make any further contributions to or on behalf of the Partnership.

4. The consideration for the purchase of Apperson's interest herein shall be the sum of One Dollar (\$1.00).

5. Day and Apperson shall deliver the considerations set forth in Sections 3 and 4 above to the Partnership and the Partnership does acknowledge receipt thereof.

6. Southern does warrant and represent the initial endorsement of HUD/FHA for insurance of the Partnership note representing the construction loan for the Project took place on April 8, 1981, and that upon payment of the considerations referred to in Sections 3 and 4 hereof to the Partnership all funds required to complete the construction of the Project and obtain final endorsement by HUD/FHA are available.

7. Simultaneously with the execution of this Agreement, Willey, Murley, BCC, Day and Apperson have executed the Amended Certificate and Restated Agreement of Limited Partnership, a copy of which is attached hereto as Exhibit A ("Amended Partnership"). Day and Apperson will promptly submit to HUD/FHA fully completed HUD/FHA Forms 2530, 2013-S and 2417 for approval of Day and Apperson by HUD/FHA as partners, and immediately upon such approval, Murley and Willey will cause the Amended Partnership Agreement to be properly recorded in the Office of the official recorder of each County in each State in which the Partnership is doing business.

If Day and Apperson are not so approved as partners by HUD/FHA within sixty (60) days after the date of this Agreement, then, Southern shall immediately return all of the considerations referred to in Sections 3 and 4 above unto Day and Apperson, respectively, and the Amended Partnership and this Agreement shall terminate, be void and of no effect.

**HUNTINGDON ASSOCIATES, LTD.**  
**(a limited partnership)**  
**AMENDED CERTIFICATE AND RESTATED AGREEMENT**  
**OF LIMITED PARTNERSHIP**  
**(excerpt)**

THIS AMENDED CERTIFICATE AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP, a limited partnership is entered into as of the 3rd day of June, 1981, by and among ROBERT WILLEY, SR. ("Willey"), GERALD D. MURLEY ("Murley"), LAWSON F. APPERSON ("Apperson"), Willey, Murley and Apperson entering into this Agreement as, and sometimes being referred to as "General Partners", BRINDLEY CONSTRUCTION COMPANY ("BCC") and CLARENCE DAY ("Day"), BCC and Day entering into this Agreement as, and sometimes being referred to as "Limited Partners";

**WITNESSETH:**

WHEREAS, Willey and Murley did by Agreement of Limited Partnership, dated June 8, 1979, filed in the Office of the Registrar, in the County of Carroll, State of Tennessee, enter into a limited partnership; and

WHEREAS, said Limited Partnership was amended on April 7, 1981, to admit BCC as a partner, said amendment having been filed in the office, county and state aforesaid; and

WHEREAS, Apperson has been admitted as a General Partner and Day has been admitted as a limited Partner in the Partnership and the partners do desire to enter into this Amended and Restated Certificate and Agreement of Limited Partnership in order to properly reflect the part-



ners, their ownership, interests, obligations and responsibilities;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties do agree, that the Certificate and Agreement of Limited Partnership of Huntingdon Associates, Ltd., be and herewith is amended and restated, in its entirety, and as such superceded, upon the following terms:

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FORMATION OF THE PARTNERSHIP

1.01. *Formation.* The parties hereto do hereby form a Limited Partnership in compliance with the laws of the State of Tennessee.

1.02. *Name of Partnership.* The Partnership shall be conducted under the name and style of HUNTINGDON ASSOCIATES, LTD., or such other name as the General Partner shall designate.

1.03. *Recording of Certificates.* Upon the execution of this Agreement by the parties hereto, the General Partner shall record same in the office where required to be filed pursuant to the Act.

1.04. *Principal Place of Business.* The principal place of business of this Partnership shall be 5350 Poplar Avenue, Suite 120, Memphis, Tennessee 38119, or at such other place or places as the General Partners may from time to time designate by notifying all other Partners. The Partnership may maintain such other offices as the General Partners may from time to time deem advisable.

\*1.05. *Term.* The term of the Partnership shall continue until December 31, 2029. The Partnership may be

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sooner dissolved in accordance with the provisions of this Agreement provided written consent of HUD (Paragraph 10.02) is granted prior to any termination or dissolution of the Partnership.

1.06. *Laws.* The rights and liabilities of the Partners, except as hereinafter expressly stated, shall be governed by the Tennessee Uniform Limited Partnership Act ("Act").

**No. 82-1738**

**IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1982**

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GRENADA BANK, A Mississippi Corporation,  
d/b/a "COAHOMA BANK,"

*Petitioner,*

**v.**

ROBERT WILLEY, SR., LINDA B. WILLEY, JOHN  
F. WATSON, JOHN T. JAMES, JR., MARKO  
PLANNING COMPANY, INCORPORATED,  
A Tennessee Corporation, and SOUTHERN CONSULTING  
CORPORATION, A Tennessee Corporation,

*Respondents,*

**v.**

CLARENCE C. DAY and  
LAWRENCE F. APPERSON,

*Respondents.*

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**MOTION TO DEFER CONSIDERATION**  
[Filed June 13, 1983]

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Petitioner hereby moves the Court to defer consideration of Petition for Writ of Certiorari, filed on April 21, 1983, on the ground that Petitioner is preparing a second petition for writ of certiorari in a companion case arising out of the United States Court of Appeals for the Sixth

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Circuit. In support of this Motion to Defer Consideration, Petitioner shows the following:

1.

The Petition for Writ of Certiorari was filed State Court of Appeals for the Fifth Circuit. [Sic]

2.

On the same date Petitioner received in the mail the decision of the United States Court of Appeals for the Sixth Circuit in a companion case.

3.

The matters under review before the United States Court of Appeals for the Fifth Circuit, and for the Sixth Circuit, are identical. They arise out of the same controversy, namely execution on the same judgments. The judgment debtor owned limited partnership interests in partnerships domiciled in the States of Mississippi and Tennessee. Petitioner sought to execute on these interests, and in so doing, identical issues of fact and law were presented, in the separate United States district courts.

4.

There now appears to be a split of opinion between the United States Court of Appeals for the Fifth Circuit and the United States Court of Appeals for the Sixth Circuit on several issues of law; thus there is an additional ground for review by this Court.

5.

Petitioner intends to file a petition for writ of certiorari of the decision of the Sixth Circuit.

For the above reasons, Petitioner requests that this Court defer consideration of the Petition for Writ of Certiorari of the decision of the United States Court of Appeals for the Fifth Circuit, and that this Court review said petition concurrently with the Petition for Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Sixth Circuit, to be filed shortly.

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**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON D. C. 20543**

**Re: Grenada Bank, etc.,  
v. Robert Willey, Sr., et al.  
No. 82-1738**

**[Filed June 13, 1983]  
[excerpt]**

The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. The petition for a writ of certiorari is denied.

**UNIFORM LIMITED PARTNERSHIP ACT AS ENACTED  
BY THE STATE OF TENNESSEE**

61-2-101. A limited partnership is a partnership formed by two (2) or more persons under the provisions of §61-2-102 having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

61-2-102. (a) Two (2) or more persons desiring to form a limited partnership shall:

(1) Sign and swear to a certificate which shall state:

(A) The name of the partnership;

(B) The character of the business;

(C) The location of the principal place of business;

(D) The name and place of residence of each member; general and limited partners being respectively designated;

(E) The term for which the partnership is to exist;

(F) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(G) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;

(H) The time, if agreed upon, when the contribution of each limited partner is to be returned;

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(I) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;

(J) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;

(K) The right, if given, of the partners to admit additional limited partners;

(L) The right, if given, of one (1) or more of the limited partners to priority over the other limited partners, as to contributions, or as to compensation by way of income, and the nature of such priority;

(M) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner; and

(N) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the office of the county register;

(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection (a).

61-2-103. A limited partnership may carry on any business which a partnership without limited partners may carry on.

61-2-104. The contributions of a limited partner may be cash or other property, but not services.

61-2-105. (a) The surname of a limited partner shall not appear in the partnership name, unless:



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(1) It is also the surname of a general partner; or

(2) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(b) A limited partner whose name appears in a partnership name contrary to the provisions of subsection (a) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

61-2-106. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(1) At the time he signed the certificate; or

(2) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in subsection (c) of §61-2-125.

61-2-107. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

61-2-108. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of §61-2-125.

61-2-109. A general partner shall have all rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners,

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except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority:

(1) To do any action in contravention of the certificate;

(2) To do any act which would make it impossible to carry on the ordinary business of the partnership;

(3) To confess a judgment against the partnership;

(4) To possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose;

(5) To admit a person as a general partner;

(6) To admit a person as a limited partner, unless the right so to do is given in the certificate; or

(7) To continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate.

61-2-110. (a) A limited partner shall have the same rights as a general partner, to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and

(3) Have dissolution and winding up by decree of court;

(b) A limited partner shall have the right to receive a share of the profits or other compensation by the way of income, and to the return of his contribution as provided in §§62-2-115 and 61-2-116.

61-2-111. A person who has contributed to the capital of a business conducted by a person or partnership, erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided, that on ascertaining the mistake, he promptly renounces his interest in the profits of the business, or other compensation by way of income.

61-2-112. (a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

61-2-113. (a) A limited partner also may loan money to and transact other business with the partnership; and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim:

(1) receive or hold as collateral security any partnership property; or

(2) receive from a general partner, or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of subsection (a) is a fraud on the creditors of the partnership.

61-2-114. Where there are several limited partners, the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

61-2-115. A limited partner may receive from his partnership the share of the profits or the compensation by way of income stipulated for the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

61-2-116. (a) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;

(2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of subsection (b); and

(3) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(b) Subject to the provisions of subsection (a), a limited partner may rightfully demand the return of his contribution:

(1) On the dissolution of a partnership; or

(2) When the date specified in the certificate for its return has arrived; or

(3) After he has given six (6) months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(c) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(d) A limited partner may have the partnership dissolved and its affairs wound up when:

(1) he rightfully but unsuccessfully demands the return of his contribution; or

(2) the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by subsection (a)(1) and the limited partner would otherwise be entitled to the return of his contribution.

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61-2-117. (a) A limited partner is liable to the partnership:

(1) For the difference between his contribution as actually made and that stated in the certificate as having been made; and

(2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership:

(1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned; and

(2) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of his contribution he is, nevertheless, liable to the partnership for any sum not in excess of such return with interest necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

61-2-118. A limited partner's interest in the partnership is personal property.

61-2-119. (a) A limited partner's interest is assignable.

(b) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(c) An assignee who does not become a substituted limited partner, has no right to require any information on account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(d) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with §61-2-125.

(f) The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under §§61-2-106 and 61-2-117.

61-2-120. The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

(1) Under a right so to do stated in the certificate; or

(2) With the consent of all members.

61-2-121. (a) On the death of a limited partner, his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(b) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

61-2-122. (a) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by subsection (a) shall not be deemed exclusive of others which may exist.

(d) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption.

61-2-123. (a) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(1) To those creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions and to general partners;



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(2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions;

(3) Those to limited partners in respect to the capital of their contributions;

(4) Those to general partners other than for capital and profits;

(5) Those to general partners in respect to profits;

(6) Those to general partners in respect to capital;

(b) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income or their contributions, respectively, in proportion to the respective amounts of such claims.

61-2-124. (a) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(b) A certificate shall be amended when:

(1) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;

(2) A person is substituted as a limited partner;

(3) An additional partner is admitted;

(4) A person is admitted as a general partner;

(5) A general partner retires, dies, or becomes insane, and the business is continued under §61-2-120;

(6) There is a change in the character of the business of the partnership;

(7) There is a false or erroneous statement in the certificate;

(8) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

(9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(10) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

61-2-125. (a) The writing to amend a certificate shall:

(1) Conform to the requirements of subsection (a) (1) of §61-2-102, as far as necessary to set forth clearly the change in the certificate which it is desired to make; and

(2) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed by all members.

(c) A person desiring the cancellation or amendment of a certificate, if any person designated in subsections (a) and (b) as a person who must execute the writing refuses to do so, may petition the chancery court to direct a cancellation or amendment thereof.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do

so, it shall order the county register in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or canceled when there is filed for record, in the office of the county register where the certificate is recorded:

(1) A writing in accordance with the provisions of subsection (a) or (b); or

(2) A certified copy of the order of court in accordance with the provisions of subsection (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter.

61-2-126. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

61-2-127. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(c) This chapter shall not be so construed as to impair the obligations of any contract existing on January 1, 1920,

nor to affect any action or proceedings begun or right accrued before such date.

61-2-128. In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern.

61-2-129. (a) A limited partnership formed under any statute of this state prior to January 1, 1920, may become a limited partnership under this chapter by complying with the provisions of §61-2-102; provided, the certificate sets forth:

(1) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(2) That the property of the partnership exceeds the amounts sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(b) A limited partnership, formed under any statute of this state prior to January 1, 1920, until or unless it becomes a limited partnership under this chapter, shall continue to be governed by the provisions of then existing laws relating to limited partnerships, except that such partnerships shall not be renewed unless so provided in the original agreement.

61-2-130. As affecting existing limited partnerships to the extent set forth in §61-2-129 the statutes relating to limited partnerships are deemed not to be repealed by this Code.

**UNIFORM LIMITED PARTNERSHIP ACT AS ENACTED  
BY THE STATE OF MISSISSIPPI**

Miss. Code Ann. §79-13-1.

Sections 79-13-1 to 79-13-57 shall be known and may be cited as the Mississippi Uniform Limited Partnership Law.

Miss. Code Ann. §79-13-3.

A limited partnership is a partnership formed by two or more persons under the provisions of section 79-13-5 of this chapter, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

Miss. Code Ann. §79-13-5.

(1) Two or more persons desiring to form a limited partnership shall sign and swear to a certificate, which shall state:

- (a) The name of the partnership.
- (b) The character of the business.
- (c) The location of the principal place of business.
- (d) The name and place of residence of each member, general and limited partners being respectively designated.
- (e) The term for which the partnership is to exist.
- (f) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.
- (g) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

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(h) The time, if agreed upon, when the contribution of each limited partner is to be returned.

(i) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

(j) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

(k) The right, if given, of the partners to admit additional limited partners.

(l) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

(m) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner.

(n) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(o) The word person as used herein includes individuals, partnerships, corporations and other associations.

The certificate so signed shall be acknowledged by each party who has signed it, and the acknowledgment shall be in the form prescribed for the acknowledgment of conveyances.

The certificate shall be filed for record in the office of the clerk of the chancery court of the county in which the

principal place of business may be, to be recorded in the records of corporate charters.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1).

Miss. Code Ann. §79-13-7.

A limited partnership may carry on any business which a partnership without limited partners may carry on unless otherwise prohibited by law.

Miss. Code Ann. §79-13-9.

The contributions of a limited partner may be cash or other property, but not services.

Miss. Code Ann. §79-13-11.

(1) The surname of a limited partner shall not appear in the partnership name, unless:

(a) It is also the surname of a general partner, or

(b) Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

Miss. Code Ann. §79-13-13.

If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

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(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided by paragraph (3) of section 79-13-49.

Miss. Code Ann. §79-13-15.

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

Miss. Code Ann. §79-13-17.

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 79-13-49.

Miss. Code Ann. §79-13-19.

(1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(a) Do any act in contravention of the certificate.

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(c) Confess a judgment against the partnership.



(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(e) Admit a person as a general partner.

(f) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

Miss. Code Ann. §79-13-21.

(1) A limited partner shall have the same rights as a general partner to:

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 79-13-31 and 79-13-33.

Miss. Code Ann. §79-13-23.

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited

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partnership is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

Miss. Code Ann. §79-13-25.

A person may be a general partner and a limited partner in the same partnership at the same time.

A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

Miss. Code Ann. §79-13-27.

(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership with general creditors, a pro-rata share of the assets. No limited partner shall in respect to any such claim:

(a) Receive or hold as collateral security and partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

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(2) The receiving of collateral security, or a payment, conveyance or release in violation of the provisions of paragraph (1) is a fraud on the creditors of the partnership.

Miss. Code Ann. §79-13-29.

Where there are several limited partners, the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income or as to any other matter. If such an agreement is made, it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

Miss. Code Ann. §79-13-31.

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

Miss. Code Ann. §79-13-33.

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

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(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2) of this section, and

(c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1), a limited partner may rightfully demand the return of his contribution:

(a) On the dissolution of a partnership, or

(b) When the date specified in the certificate for its return has arrived, or

(c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have a partnership dissolved and its affairs wound up when:

(a) He rightfully but unsuccessfully demands the return of his contribution, or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1) (a) and the limited partner would otherwise be entitled to the return of his contribution.

Miss. Code Ann. §79-13-35.

(1) A limited partner is liable to the partnership:

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

Miss. Code Ann. §79-13-37.

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(1) A limited partner's interest in the partnership is personal property.

(2) A limited partner's interest is assignable.

(3) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(4) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(5) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(6) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 79-13-49.

(7) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(8) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 79-13-13 and 79-13-35.

**Miss. Code Ann. §79-13-39.**

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The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

- (a) Under a right so to do stated in the certificate, or
- (b) With the consent of all members.

Miss. Code Ann. §79-13-41.

On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

Miss. Code Ann. §79-13-43.

(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all orders, directions and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in sections 79-13-1 to 79-13-57 shall be held to deprive a limited partner of his statutory exemption.

Miss. Code Ann. §79-13-45.

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(c) Those to limited partners in respect to the capital of their contributions.

(d) Those to general partners other than for capital and profits.

(e) Those to general partners in respect to profits.

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

Miss. Code Ann. §79-13-47.

(1) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when:

(a) There is a change in the name of partnership or in the amount or character of the contribution of any limited partner.



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- (b) A person is substituted as a limited partner.
- (c) An additional limited partner is admitted.
- (d) A person is admitted as a general partner.
- (e) A general partner retires, dies or becomes insane, and the business is continued under section 79-13-41.
- (f) There is a change in the character of the business of the partnership.
- (g) There is a false or erroneous statement in the certificate.
- (h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.
- (i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or
- (j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

Miss. Code Ann. §79-13-49.

- (1) The writing to amend a certificate shall:
  - (a) Conform to the requirements of paragraph (1) of section 79-13-5 as far as necessary to set forth clearly the change in the certificate which it is desired to make, and
  - (b) Be signed and sworn to by all members; and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

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(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the chancery court of the judicial district wherein he resides, to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the chancery clerk to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or cancelled when there is filed for record in the office of the chancery clerk where the certificate is recorded:

(a) A writing in accordance with the provisions of paragraphs (1) or (2), or

(b) A certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter.

Miss. Code Ann. §79-13-51.

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership,

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except where the object is to enforce a limited partner's right against or liability to the partnership.

Miss. Code Ann. §79-13-53.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to sections 79-13-1 to 79-13-57.

(2) Sections 79-13-1 to 79-13-57 shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) Sections 79-13-1 to 79-13-57 shall not be so construed as to impair the obligations of any contract existing when the sections 79-13-1 to 79-13-57 go into effect, nor to affect any action on proceedings begun or right accrued before sections 79-13-1 to 79-13-57 take effect.

Miss. Code Ann. §79-13-55.

In any case not provided for in sections 79-13-1 to 79-13-57 the rules of law and equity, including the law merchant, shall govern.

Miss. Code Ann. §79-13-57.

(1) A limited partnership formed under any statute of this state prior to the adoption of sections 79-13-1 to 79-13-57 may become a limited partnership under said sections by complying with the provisions of section 79-13-5, provided the certificate sets forth:

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not

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claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this state prior to the adoption of sections 79-13-1 to 79-13-57, until or unless it becomes a limited partnership under said sections, shall continue to be governed by the provisions of sections 79-13-101 to 79-13-137, both inclusive, Code of 1972, except that such partnership shall not be renewed unless so provided in the original agreement.